

1 AN ACT concerning firearms.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Firearm Owners Identification Card Act is
5 amended by changing Section 8 and by adding Section 8.2 as
6 follows:

7 (430 ILCS 65/8) (from Ch. 38, par. 83-8)

8 Sec. 8. The Department of State Police has authority to
9 deny an application for or to revoke and seize a Firearm
10 Owner's Identification Card previously issued under this Act
11 only if the Department finds that the applicant or the person
12 to whom such card was issued is or was at the time of issuance:

13 (a) A person under 21 years of age who has been convicted
14 of a misdemeanor other than a traffic offense or adjudged
15 delinquent;

16 (b) A person under 21 years of age who does not have the
17 written consent of his parent or guardian to acquire and
18 possess firearms and firearm ammunition, or whose parent or
19 guardian has revoked such written consent, or where such parent
20 or guardian does not qualify to have a Firearm Owner's
21 Identification Card;

22 (c) A person convicted of a felony under the laws of this
23 or any other jurisdiction;

1 (d) A person addicted to narcotics;

2 (e) A person who has been a patient of a mental institution
3 within the past 5 years;

4 (f) A person whose mental condition is of such a nature
5 that it poses a clear and present danger to the applicant, any
6 other person or persons or the community;

7 For the purposes of this Section, "mental condition" means
8 a state of mind manifested by violent, suicidal, threatening or
9 assaultive behavior.

10 (g) A person who is mentally retarded;

11 (h) A person who intentionally makes a false statement in
12 the Firearm Owner's Identification Card application;

13 (i) An alien who is unlawfully present in the United States
14 under the laws of the United States;

15 (i-5) An alien who has been admitted to the United States
16 under a non-immigrant visa (as that term is defined in Section
17 101(a)(26) of the Immigration and Nationality Act (8 U.S.C.
18 1101(a)(26))), except that this subsection (i-5) does not apply
19 to any alien who has been lawfully admitted to the United
20 States under a non-immigrant visa if that alien is:

21 (1) admitted to the United States for lawful hunting or
22 sporting purposes;

23 (2) an official representative of a foreign government
24 who is:

25 (A) accredited to the United States Government or
26 the Government's mission to an international

1 organization having its headquarters in the United
2 States; or

3 (B) en route to or from another country to which
4 that alien is accredited;

5 (3) an official of a foreign government or
6 distinguished foreign visitor who has been so designated by
7 the Department of State;

8 (4) a foreign law enforcement officer of a friendly
9 foreign government entering the United States on official
10 business; or

11 (5) one who has received a waiver from the Attorney
12 General of the United States pursuant to 18 U.S.C.
13 922(y)(3);

14 (j) (Blank) ~~A person who is subject to an existing order of~~
15 ~~protection prohibiting him or her from possessing a firearm;~~

16 (k) A person who has been convicted within the past 5 years
17 of battery, assault, aggravated assault, violation of an order
18 of protection, or a substantially similar offense in another
19 jurisdiction, in which a firearm was used or possessed;

20 (l) A person who has been convicted of domestic battery or
21 a substantially similar offense in another jurisdiction
22 committed on or after January 1, 1998;

23 (m) A person who has been convicted within the past 5 years
24 of domestic battery or a substantially similar offense in
25 another jurisdiction committed before January 1, 1998;

26 (n) A person who is prohibited from acquiring or possessing

1 firearms or firearm ammunition by any Illinois State statute or
2 by federal law;

3 (o) A minor subject to a petition filed under Section 5-520
4 of the Juvenile Court Act of 1987 alleging that the minor is a
5 delinquent minor for the commission of an offense that if
6 committed by an adult would be a felony; or

7 (p) An adult who had been adjudicated a delinquent minor
8 under the Juvenile Court Act of 1987 for the commission of an
9 offense that if committed by an adult would be a felony.

10 (Source: P.A. 92-854, eff. 12-5-02; 93-367, eff. 1-1-04.)

11 (430 ILCS 65/8.2 new)

12 Sec. 8.2. Firearm Owner's Identification Card denial or
13 revocation. The Department of State Police shall deny an
14 application or shall revoke and seize a Firearm Owner's
15 Identification Card previously issued under this Act if the
16 Department finds that the applicant or person to whom such card
17 was issued is or was at the time of issuance subject to an
18 existing order of protection.

19 Section 10. The Code of Criminal Procedure of 1963 is
20 amended by changing Section 112A-14 as follows:

21 (725 ILCS 5/112A-14) (from Ch. 38, par. 112A-14)

22 Sec. 112A-14. Order of protection; remedies.

23 (a) Issuance of order. If the court finds that petitioner

1 has been abused by a family or household member, as defined in
2 this Article, an order of protection prohibiting such abuse
3 shall issue; provided that petitioner must also satisfy the
4 requirements of one of the following Sections, as appropriate:
5 Section 112A-17 on emergency orders, Section 112A-18 on interim
6 orders, or Section 112A-19 on plenary orders. Petitioner shall
7 not be denied an order of protection because petitioner or
8 respondent is a minor. The court, when determining whether or
9 not to issue an order of protection, shall not require physical
10 manifestations of abuse on the person of the victim.
11 Modification and extension of prior orders of protection shall
12 be in accordance with this Article.

13 (b) Remedies and standards. The remedies to be included in
14 an order of protection shall be determined in accordance with
15 this Section and one of the following Sections, as appropriate:
16 Section 112A-17 on emergency orders, Section 112A-18 on interim
17 orders, and Section 112A-19 on plenary orders. The remedies
18 listed in this subsection shall be in addition to other civil
19 or criminal remedies available to petitioner.

20 (1) Prohibition of abuse. Prohibit respondent's
21 harassment, interference with personal liberty,
22 intimidation of a dependent, physical abuse or willful
23 deprivation, as defined in this Article, if such abuse has
24 occurred or otherwise appears likely to occur if not
25 prohibited.

26 (2) Grant of exclusive possession of residence.

1 Prohibit respondent from entering or remaining in any
2 residence or household of the petitioner, including one
3 owned or leased by respondent, if petitioner has a right to
4 occupancy thereof. The grant of exclusive possession of the
5 residence shall not affect title to real property, nor
6 shall the court be limited by the standard set forth in
7 Section 701 of the Illinois Marriage and Dissolution of
8 Marriage Act.

9 (A) Right to occupancy. A party has a right to
10 occupancy of a residence or household if it is solely
11 or jointly owned or leased by that party, that party's
12 spouse, a person with a legal duty to support that
13 party or a minor child in that party's care, or by any
14 person or entity other than the opposing party that
15 authorizes that party's occupancy (e.g., a domestic
16 violence shelter). Standards set forth in subparagraph
17 (B) shall not preclude equitable relief.

18 (B) Presumption of hardships. If petitioner and
19 respondent each has the right to occupancy of a
20 residence or household, the court shall balance (i) the
21 hardships to respondent and any minor child or
22 dependent adult in respondent's care resulting from
23 entry of this remedy with (ii) the hardships to
24 petitioner and any minor child or dependent adult in
25 petitioner's care resulting from continued exposure to
26 the risk of abuse (should petitioner remain at the

1 residence or household) or from loss of possession of
2 the residence or household (should petitioner leave to
3 avoid the risk of abuse). When determining the balance
4 of hardships, the court shall also take into account
5 the accessibility of the residence or household.
6 Hardships need not be balanced if respondent does not
7 have a right to occupancy.

8 The balance of hardships is presumed to favor
9 possession by petitioner unless the presumption is
10 rebutted by a preponderance of the evidence, showing
11 that the hardships to respondent substantially
12 outweigh the hardships to petitioner and any minor
13 child or dependent adult in petitioner's care. The
14 court, on the request of petitioner or on its own
15 motion, may order respondent to provide suitable,
16 accessible, alternate housing for petitioner instead
17 of excluding respondent from a mutual residence or
18 household.

19 (3) Stay away order and additional prohibitions. Order
20 respondent to stay away from petitioner or any other person
21 protected by the order of protection, or prohibit
22 respondent from entering or remaining present at
23 petitioner's school, place of employment, or other
24 specified places at times when petitioner is present, or
25 both, if reasonable, given the balance of hardships.
26 Hardships need not be balanced for the court to enter a

1 stay away order or prohibit entry if respondent has no
2 right to enter the premises.

3 If an order of protection grants petitioner exclusive
4 possession of the residence, or prohibits respondent from
5 entering the residence, or orders respondent to stay away
6 from petitioner or other protected persons, then the court
7 may allow respondent access to the residence to remove
8 items of clothing and personal adornment used exclusively
9 by respondent, medications, and other items as the court
10 directs. The right to access shall be exercised on only one
11 occasion as the court directs and in the presence of an
12 agreed-upon adult third party or law enforcement officer.

13 (4) Counseling. Require or recommend the respondent to
14 undergo counseling for a specified duration with a social
15 worker, psychologist, clinical psychologist, psychiatrist,
16 family service agency, alcohol or substance abuse program,
17 mental health center guidance counselor, agency providing
18 services to elders, program designed for domestic violence
19 abusers or any other guidance service the court deems
20 appropriate.

21 (5) Physical care and possession of the minor child. In
22 order to protect the minor child from abuse, neglect, or
23 unwarranted separation from the person who has been the
24 minor child's primary caretaker, or to otherwise protect
25 the well-being of the minor child, the court may do either
26 or both of the following: (i) grant petitioner physical

1 care or possession of the minor child, or both, or (ii)
2 order respondent to return a minor child to, or not remove
3 a minor child from, the physical care of a parent or person
4 in loco parentis.

5 If a court finds, after a hearing, that respondent has
6 committed abuse (as defined in Section 112A-3) of a minor
7 child, there shall be a rebuttable presumption that
8 awarding physical care to respondent would not be in the
9 minor child's best interest.

10 (6) Temporary legal custody. Award temporary legal
11 custody to petitioner in accordance with this Section, the
12 Illinois Marriage and Dissolution of Marriage Act, the
13 Illinois Parentage Act of 1984, and this State's Uniform
14 Child-Custody Jurisdiction and Enforcement Act.

15 If a court finds, after a hearing, that respondent has
16 committed abuse (as defined in Section 112A-3) of a minor
17 child, there shall be a rebuttable presumption that
18 awarding temporary legal custody to respondent would not be
19 in the child's best interest.

20 (7) Visitation. Determine the visitation rights, if
21 any, of respondent in any case in which the court awards
22 physical care or temporary legal custody of a minor child
23 to petitioner. The court shall restrict or deny
24 respondent's visitation with a minor child if the court
25 finds that respondent has done or is likely to do any of
26 the following: (i) abuse or endanger the minor child during

1 visitation; (ii) use the visitation as an opportunity to
2 abuse or harass petitioner or petitioner's family or
3 household members; (iii) improperly conceal or detain the
4 minor child; or (iv) otherwise act in a manner that is not
5 in the best interests of the minor child. The court shall
6 not be limited by the standards set forth in Section 607.1
7 of the Illinois Marriage and Dissolution of Marriage Act.
8 If the court grants visitation, the order shall specify
9 dates and times for the visitation to take place or other
10 specific parameters or conditions that are appropriate. No
11 order for visitation shall refer merely to the term
12 "reasonable visitation".

13 Petitioner may deny respondent access to the minor
14 child if, when respondent arrives for visitation,
15 respondent is under the influence of drugs or alcohol and
16 constitutes a threat to the safety and well-being of
17 petitioner or petitioner's minor children or is behaving in
18 a violent or abusive manner.

19 If necessary to protect any member of petitioner's
20 family or household from future abuse, respondent shall be
21 prohibited from coming to petitioner's residence to meet
22 the minor child for visitation, and the parties shall
23 submit to the court their recommendations for reasonable
24 alternative arrangements for visitation. A person may be
25 approved to supervise visitation only after filing an
26 affidavit accepting that responsibility and acknowledging

1 accountability to the court.

2 (8) Removal or concealment of minor child. Prohibit
3 respondent from removing a minor child from the State or
4 concealing the child within the State.

5 (9) Order to appear. Order the respondent to appear in
6 court, alone or with a minor child, to prevent abuse,
7 neglect, removal or concealment of the child, to return the
8 child to the custody or care of the petitioner or to permit
9 any court-ordered interview or examination of the child or
10 the respondent.

11 (10) Possession of personal property. Grant petitioner
12 exclusive possession of personal property and, if
13 respondent has possession or control, direct respondent to
14 promptly make it available to petitioner, if:

15 (i) petitioner, but not respondent, owns the
16 property; or

17 (ii) the parties own the property jointly; sharing
18 it would risk abuse of petitioner by respondent or is
19 impracticable; and the balance of hardships favors
20 temporary possession by petitioner.

21 If petitioner's sole claim to ownership of the property
22 is that it is marital property, the court may award
23 petitioner temporary possession thereof under the
24 standards of subparagraph (ii) of this paragraph only if a
25 proper proceeding has been filed under the Illinois
26 Marriage and Dissolution of Marriage Act, as now or

1 hereafter amended.

2 No order under this provision shall affect title to
3 property.

4 (11) Protection of property. Forbid the respondent
5 from taking, transferring, encumbering, concealing,
6 damaging or otherwise disposing of any real or personal
7 property, except as explicitly authorized by the court, if:

8 (i) petitioner, but not respondent, owns the
9 property; or

10 (ii) the parties own the property jointly, and the
11 balance of hardships favors granting this remedy.

12 If petitioner's sole claim to ownership of the property
13 is that it is marital property, the court may grant
14 petitioner relief under subparagraph (ii) of this
15 paragraph only if a proper proceeding has been filed under
16 the Illinois Marriage and Dissolution of Marriage Act, as
17 now or hereafter amended.

18 The court may further prohibit respondent from
19 improperly using the financial or other resources of an
20 aged member of the family or household for the profit or
21 advantage of respondent or of any other person.

22 (12) Order for payment of support. Order respondent to
23 pay temporary support for the petitioner or any child in
24 the petitioner's care or custody, when the respondent has a
25 legal obligation to support that person, in accordance with
26 the Illinois Marriage and Dissolution of Marriage Act,

1 which shall govern, among other matters, the amount of
2 support, payment through the clerk and withholding of
3 income to secure payment. An order for child support may be
4 granted to a petitioner with lawful physical care or
5 custody of a child, or an order or agreement for physical
6 care or custody, prior to entry of an order for legal
7 custody. Such a support order shall expire upon entry of a
8 valid order granting legal custody to another, unless
9 otherwise provided in the custody order.

10 (13) Order for payment of losses. Order respondent to
11 pay petitioner for losses suffered as a direct result of
12 the abuse. Such losses shall include, but not be limited
13 to, medical expenses, lost earnings or other support,
14 repair or replacement of property damaged or taken,
15 reasonable attorney's fees, court costs and moving or other
16 travel expenses, including additional reasonable expenses
17 for temporary shelter and restaurant meals.

18 (i) Losses affecting family needs. If a party is
19 entitled to seek maintenance, child support or
20 property distribution from the other party under the
21 Illinois Marriage and Dissolution of Marriage Act, as
22 now or hereafter amended, the court may order
23 respondent to reimburse petitioner's actual losses, to
24 the extent that such reimbursement would be
25 "appropriate temporary relief", as authorized by
26 subsection (a) (3) of Section 501 of that Act.

1 (ii) Recovery of expenses. In the case of an
2 improper concealment or removal of a minor child, the
3 court may order respondent to pay the reasonable
4 expenses incurred or to be incurred in the search for
5 and recovery of the minor child, including but not
6 limited to legal fees, court costs, private
7 investigator fees, and travel costs.

8 (14) Prohibition of entry. Prohibit the respondent
9 from entering or remaining in the residence or household
10 while the respondent is under the influence of alcohol or
11 drugs and constitutes a threat to the safety and well-being
12 of the petitioner or the petitioner's children.

13 (14.5) Prohibition of firearm possession. (a) When a
14 complaint is made under a request for an order of
15 protection, that the respondent has threatened or is likely
16 to use firearms illegally against the petitioner, and the
17 respondent is present in court, or has failed to appear
18 after receiving actual notice, the court shall examine on
19 oath the petitioner, and any witnesses who may be produced.
20 If the court is satisfied that there is any danger of the
21 illegal use of firearms, it shall include in the order of
22 protection the requirement that any firearms and any
23 Firearm Owner's Identification Card in the possession of
24 the respondent, except as provided in subsection (b), be
25 turned over to the local law enforcement agency for
26 safekeeping. If the respondent fails to appear, or refuses

1 or fails to surrender his or her firearms or Firearm
2 Owner's Identification Card, the court shall issue a
3 warrant for seizure of any firearm and any Firearm Owner's
4 Identification Card in the possession of the respondent.

5 The period of safekeeping shall be for a stated period of
6 time not to exceed 2 years. The firearm or firearms and any
7 Firearm Owner's Identification Card shall be returned to
8 the respondent at the end of the stated period or at
9 expiration of the order of protection, whichever is sooner.

10 (b) If the respondent is a peace officer as defined in
11 Section 2-13 of the Criminal Code of 1961, the court shall
12 order that any firearms used by the respondent in the
13 performance of his or her duties as a peace officer be
14 surrendered to the chief law enforcement executive of the
15 agency in which the respondent is employed, who shall
16 retain the firearms for safekeeping for the stated period
17 not to exceed 2 years as set forth in the court order.

18 (15) Prohibition of access to records. If an order of
19 protection prohibits respondent from having contact with
20 the minor child, or if petitioner's address is omitted
21 under subsection (b) of Section 112A-5, or if necessary to
22 prevent abuse or wrongful removal or concealment of a minor
23 child, the order shall deny respondent access to, and
24 prohibit respondent from inspecting, obtaining, or
25 attempting to inspect or obtain, school or any other
26 records of the minor child who is in the care of

1 petitioner.

2 (16) Order for payment of shelter services. Order
3 respondent to reimburse a shelter providing temporary
4 housing and counseling services to the petitioner for the
5 cost of the services, as certified by the shelter and
6 deemed reasonable by the court.

7 (17) Order for injunctive relief. Enter injunctive
8 relief necessary or appropriate to prevent further abuse of
9 a family or household member or to effectuate one of the
10 granted remedies, if supported by the balance of hardships.
11 If the harm to be prevented by the injunction is abuse or
12 any other harm that one of the remedies listed in
13 paragraphs (1) through (16) of this subsection is designed
14 to prevent, no further evidence is necessary to establish
15 that the harm is an irreparable injury.

16 (c) Relevant factors; findings.

17 (1) In determining whether to grant a specific remedy,
18 other than payment of support, the court shall consider
19 relevant factors, including but not limited to the
20 following:

21 (i) the nature, frequency, severity, pattern and
22 consequences of the respondent's past abuse of the
23 petitioner or any family or household member,
24 including the concealment of his or her location in
25 order to evade service of process or notice, and the
26 likelihood of danger of future abuse to petitioner or

1 any member of petitioner's or respondent's family or
2 household; and

3 (ii) the danger that any minor child will be abused
4 or neglected or improperly removed from the
5 jurisdiction, improperly concealed within the State or
6 improperly separated from the child's primary
7 caretaker.

8 (2) In comparing relative hardships resulting to the
9 parties from loss of possession of the family home, the
10 court shall consider relevant factors, including but not
11 limited to the following:

12 (i) availability, accessibility, cost, safety,
13 adequacy, location and other characteristics of
14 alternate housing for each party and any minor child or
15 dependent adult in the party's care;

16 (ii) the effect on the party's employment; and

17 (iii) the effect on the relationship of the party,
18 and any minor child or dependent adult in the party's
19 care, to family, school, church and community.

20 (3) Subject to the exceptions set forth in paragraph
21 (4) of this subsection, the court shall make its findings
22 in an official record or in writing, and shall at a minimum
23 set forth the following:

24 (i) That the court has considered the applicable
25 relevant factors described in paragraphs (1) and (2) of
26 this subsection.

1 (ii) Whether the conduct or actions of respondent,
2 unless prohibited, will likely cause irreparable harm
3 or continued abuse.

4 (iii) Whether it is necessary to grant the
5 requested relief in order to protect petitioner or
6 other alleged abused persons.

7 (4) For purposes of issuing an ex parte emergency order
8 of protection, the court, as an alternative to or as a
9 supplement to making the findings described in paragraphs
10 (c) (3) (i) through (c) (3) (iii) of this subsection, may use
11 the following procedure:

12 When a verified petition for an emergency order of
13 protection in accordance with the requirements of Sections
14 112A-5 and 112A-17 is presented to the court, the court
15 shall examine petitioner on oath or affirmation. An
16 emergency order of protection shall be issued by the court
17 if it appears from the contents of the petition and the
18 examination of petitioner that the averments are
19 sufficient to indicate abuse by respondent and to support
20 the granting of relief under the issuance of the emergency
21 order of protection.

22 (5) Never married parties. No rights or
23 responsibilities for a minor child born outside of marriage
24 attach to a putative father until a father and child
25 relationship has been established under the Illinois
26 Parentage Act of 1984. Absent such an adjudication, no

1 putative father shall be granted temporary custody of the
2 minor child, visitation with the minor child, or physical
3 care and possession of the minor child, nor shall an order
4 of payment for support of the minor child be entered.

5 (d) Balance of hardships; findings. If the court finds that
6 the balance of hardships does not support the granting of a
7 remedy governed by paragraph (2), (3), (10), (11), or (16) of
8 subsection (b) of this Section, which may require such
9 balancing, the court's findings shall so indicate and shall
10 include a finding as to whether granting the remedy will result
11 in hardship to respondent that would substantially outweigh the
12 hardship to petitioner from denial of the remedy. The findings
13 shall be an official record or in writing.

14 (e) Denial of remedies. Denial of any remedy shall not be
15 based, in whole or in part, on evidence that:

16 (1) Respondent has cause for any use of force, unless
17 that cause satisfies the standards for justifiable use of
18 force provided by Article VII of the Criminal Code of 1961;

19 (2) Respondent was voluntarily intoxicated;

20 (3) Petitioner acted in self-defense or defense of
21 another, provided that, if petitioner utilized force, such
22 force was justifiable under Article VII of the Criminal
23 Code of 1961;

24 (4) Petitioner did not act in self-defense or defense
25 of another;

26 (5) Petitioner left the residence or household to avoid

1 further abuse by respondent;

2 (6) Petitioner did not leave the residence or household
3 to avoid further abuse by respondent;

4 (7) Conduct by any family or household member excused
5 the abuse by respondent, unless that same conduct would
6 have excused such abuse if the parties had not been family
7 or household members.

8 (Source: P.A. 93-108, eff. 1-1-04.)

9 Section 15. The Illinois Domestic Violence Act of 1986 is
10 amended by changing Section 214 as follows:

11 (750 ILCS 60/214) (from Ch. 40, par. 2312-14)

12 Sec. 214. Order of protection; remedies.

13 (a) Issuance of order. If the court finds that petitioner
14 has been abused by a family or household member or that
15 petitioner is a high-risk adult who has been abused, neglected,
16 or exploited, as defined in this Act, an order of protection
17 prohibiting the abuse, neglect, or exploitation shall issue;
18 provided that petitioner must also satisfy the requirements of
19 one of the following Sections, as appropriate: Section 217 on
20 emergency orders, Section 218 on interim orders, or Section 219
21 on plenary orders. Petitioner shall not be denied an order of
22 protection because petitioner or respondent is a minor. The
23 court, when determining whether or not to issue an order of
24 protection, shall not require physical manifestations of abuse

1 on the person of the victim. Modification and extension of
2 prior orders of protection shall be in accordance with this
3 Act.

4 (b) Remedies and standards. The remedies to be included in
5 an order of protection shall be determined in accordance with
6 this Section and one of the following Sections, as appropriate:
7 Section 217 on emergency orders, Section 218 on interim orders,
8 and Section 219 on plenary orders. The remedies listed in this
9 subsection shall be in addition to other civil or criminal
10 remedies available to petitioner.

11 (1) Prohibition of abuse, neglect, or exploitation.
12 Prohibit respondent's harassment, interference with
13 personal liberty, intimidation of a dependent, physical
14 abuse, or willful deprivation, neglect or exploitation, as
15 defined in this Act, or stalking of the petitioner, as
16 defined in Section 12-7.3 of the Criminal Code of 1961, if
17 such abuse, neglect, exploitation, or stalking has
18 occurred or otherwise appears likely to occur if not
19 prohibited.

20 (2) Grant of exclusive possession of residence.
21 Prohibit respondent from entering or remaining in any
22 residence or household of the petitioner, including one
23 owned or leased by respondent, if petitioner has a right to
24 occupancy thereof. The grant of exclusive possession of the
25 residence shall not affect title to real property, nor
26 shall the court be limited by the standard set forth in

1 Section 701 of the Illinois Marriage and Dissolution of
2 Marriage Act.

3 (A) Right to occupancy. A party has a right to
4 occupancy of a residence or household if it is solely
5 or jointly owned or leased by that party, that party's
6 spouse, a person with a legal duty to support that
7 party or a minor child in that party's care, or by any
8 person or entity other than the opposing party that
9 authorizes that party's occupancy (e.g., a domestic
10 violence shelter). Standards set forth in subparagraph
11 (B) shall not preclude equitable relief.

12 (B) Presumption of hardships. If petitioner and
13 respondent each has the right to occupancy of a
14 residence or household, the court shall balance (i) the
15 hardships to respondent and any minor child or
16 dependent adult in respondent's care resulting from
17 entry of this remedy with (ii) the hardships to
18 petitioner and any minor child or dependent adult in
19 petitioner's care resulting from continued exposure to
20 the risk of abuse (should petitioner remain at the
21 residence or household) or from loss of possession of
22 the residence or household (should petitioner leave to
23 avoid the risk of abuse). When determining the balance
24 of hardships, the court shall also take into account
25 the accessibility of the residence or household.
26 Hardships need not be balanced if respondent does not

1 have a right to occupancy.

2 The balance of hardships is presumed to favor
3 possession by petitioner unless the presumption is
4 rebutted by a preponderance of the evidence, showing
5 that the hardships to respondent substantially
6 outweigh the hardships to petitioner and any minor
7 child or dependent adult in petitioner's care. The
8 court, on the request of petitioner or on its own
9 motion, may order respondent to provide suitable,
10 accessible, alternate housing for petitioner instead
11 of excluding respondent from a mutual residence or
12 household.

13 (3) Stay away order and additional prohibitions. Order
14 respondent to stay away from petitioner or any other person
15 protected by the order of protection, or prohibit
16 respondent from entering or remaining present at
17 petitioner's school, place of employment, or other
18 specified places at times when petitioner is present, or
19 both, if reasonable, given the balance of hardships.
20 Hardships need not be balanced for the court to enter a
21 stay away order or prohibit entry if respondent has no
22 right to enter the premises.

23 If an order of protection grants petitioner exclusive
24 possession of the residence, or prohibits respondent from
25 entering the residence, or orders respondent to stay away
26 from petitioner or other protected persons, then the court

1 may allow respondent access to the residence to remove
2 items of clothing and personal adornment used exclusively
3 by respondent, medications, and other items as the court
4 directs. The right to access shall be exercised on only one
5 occasion as the court directs and in the presence of an
6 agreed-upon adult third party or law enforcement officer.

7 (4) Counseling. Require or recommend the respondent to
8 undergo counseling for a specified duration with a social
9 worker, psychologist, clinical psychologist, psychiatrist,
10 family service agency, alcohol or substance abuse program,
11 mental health center guidance counselor, agency providing
12 services to elders, program designed for domestic violence
13 abusers or any other guidance service the court deems
14 appropriate.

15 (5) Physical care and possession of the minor child. In
16 order to protect the minor child from abuse, neglect, or
17 unwarranted separation from the person who has been the
18 minor child's primary caretaker, or to otherwise protect
19 the well-being of the minor child, the court may do either
20 or both of the following: (i) grant petitioner physical
21 care or possession of the minor child, or both, or (ii)
22 order respondent to return a minor child to, or not remove
23 a minor child from, the physical care of a parent or person
24 in loco parentis.

25 If a court finds, after a hearing, that respondent has
26 committed abuse (as defined in Section 103) of a minor

1 child, there shall be a rebuttable presumption that
2 awarding physical care to respondent would not be in the
3 minor child's best interest.

4 (6) Temporary legal custody. Award temporary legal
5 custody to petitioner in accordance with this Section, the
6 Illinois Marriage and Dissolution of Marriage Act, the
7 Illinois Parentage Act of 1984, and this State's Uniform
8 Child-Custody Jurisdiction and Enforcement Act.

9 If a court finds, after a hearing, that respondent has
10 committed abuse (as defined in Section 103) of a minor
11 child, there shall be a rebuttable presumption that
12 awarding temporary legal custody to respondent would not be
13 in the child's best interest.

14 (7) Visitation. Determine the visitation rights, if
15 any, of respondent in any case in which the court awards
16 physical care or temporary legal custody of a minor child
17 to petitioner. The court shall restrict or deny
18 respondent's visitation with a minor child if the court
19 finds that respondent has done or is likely to do any of
20 the following: (i) abuse or endanger the minor child during
21 visitation; (ii) use the visitation as an opportunity to
22 abuse or harass petitioner or petitioner's family or
23 household members; (iii) improperly conceal or detain the
24 minor child; or (iv) otherwise act in a manner that is not
25 in the best interests of the minor child. The court shall
26 not be limited by the standards set forth in Section 607.1

1 of the Illinois Marriage and Dissolution of Marriage Act.
2 If the court grants visitation, the order shall specify
3 dates and times for the visitation to take place or other
4 specific parameters or conditions that are appropriate. No
5 order for visitation shall refer merely to the term
6 "reasonable visitation".

7 Petitioner may deny respondent access to the minor
8 child if, when respondent arrives for visitation,
9 respondent is under the influence of drugs or alcohol and
10 constitutes a threat to the safety and well-being of
11 petitioner or petitioner's minor children or is behaving in
12 a violent or abusive manner.

13 If necessary to protect any member of petitioner's
14 family or household from future abuse, respondent shall be
15 prohibited from coming to petitioner's residence to meet
16 the minor child for visitation, and the parties shall
17 submit to the court their recommendations for reasonable
18 alternative arrangements for visitation. A person may be
19 approved to supervise visitation only after filing an
20 affidavit accepting that responsibility and acknowledging
21 accountability to the court.

22 (8) Removal or concealment of minor child. Prohibit
23 respondent from removing a minor child from the State or
24 concealing the child within the State.

25 (9) Order to appear. Order the respondent to appear in
26 court, alone or with a minor child, to prevent abuse,

1 neglect, removal or concealment of the child, to return the
2 child to the custody or care of the petitioner or to permit
3 any court-ordered interview or examination of the child or
4 the respondent.

5 (10) Possession of personal property. Grant petitioner
6 exclusive possession of personal property and, if
7 respondent has possession or control, direct respondent to
8 promptly make it available to petitioner, if:

9 (i) petitioner, but not respondent, owns the
10 property; or

11 (ii) the parties own the property jointly; sharing
12 it would risk abuse of petitioner by respondent or is
13 impracticable; and the balance of hardships favors
14 temporary possession by petitioner.

15 If petitioner's sole claim to ownership of the property
16 is that it is marital property, the court may award
17 petitioner temporary possession thereof under the
18 standards of subparagraph (ii) of this paragraph only if a
19 proper proceeding has been filed under the Illinois
20 Marriage and Dissolution of Marriage Act, as now or
21 hereafter amended.

22 No order under this provision shall affect title to
23 property.

24 (11) Protection of property. Forbid the respondent
25 from taking, transferring, encumbering, concealing,
26 damaging or otherwise disposing of any real or personal

1 property, except as explicitly authorized by the court, if:

2 (i) petitioner, but not respondent, owns the
3 property; or

4 (ii) the parties own the property jointly, and the
5 balance of hardships favors granting this remedy.

6 If petitioner's sole claim to ownership of the property
7 is that it is marital property, the court may grant
8 petitioner relief under subparagraph (ii) of this
9 paragraph only if a proper proceeding has been filed under
10 the Illinois Marriage and Dissolution of Marriage Act, as
11 now or hereafter amended.

12 The court may further prohibit respondent from
13 improperly using the financial or other resources of an
14 aged member of the family or household for the profit or
15 advantage of respondent or of any other person.

16 (12) Order for payment of support. Order respondent to
17 pay temporary support for the petitioner or any child in
18 the petitioner's care or custody, when the respondent has a
19 legal obligation to support that person, in accordance with
20 the Illinois Marriage and Dissolution of Marriage Act,
21 which shall govern, among other matters, the amount of
22 support, payment through the clerk and withholding of
23 income to secure payment. An order for child support may be
24 granted to a petitioner with lawful physical care or
25 custody of a child, or an order or agreement for physical
26 care or custody, prior to entry of an order for legal

1 custody. Such a support order shall expire upon entry of a
2 valid order granting legal custody to another, unless
3 otherwise provided in the custody order.

4 (13) Order for payment of losses. Order respondent to
5 pay petitioner for losses suffered as a direct result of
6 the abuse, neglect, or exploitation. Such losses shall
7 include, but not be limited to, medical expenses, lost
8 earnings or other support, repair or replacement of
9 property damaged or taken, reasonable attorney's fees,
10 court costs and moving or other travel expenses, including
11 additional reasonable expenses for temporary shelter and
12 restaurant meals.

13 (i) Losses affecting family needs. If a party is
14 entitled to seek maintenance, child support or
15 property distribution from the other party under the
16 Illinois Marriage and Dissolution of Marriage Act, as
17 now or hereafter amended, the court may order
18 respondent to reimburse petitioner's actual losses, to
19 the extent that such reimbursement would be
20 "appropriate temporary relief", as authorized by
21 subsection (a) (3) of Section 501 of that Act.

22 (ii) Recovery of expenses. In the case of an
23 improper concealment or removal of a minor child, the
24 court may order respondent to pay the reasonable
25 expenses incurred or to be incurred in the search for
26 and recovery of the minor child, including but not

1 limited to legal fees, court costs, private
2 investigator fees, and travel costs.

3 (14) Prohibition of entry. Prohibit the respondent
4 from entering or remaining in the residence or household
5 while the respondent is under the influence of alcohol or
6 drugs and constitutes a threat to the safety and well-being
7 of the petitioner or the petitioner's children.

8 (14.5) Prohibition of firearm possession.

9 (a) When a complaint is made under a request for an
10 order of protection, that the respondent has
11 threatened or is likely to use firearms illegally
12 against the petitioner, and the respondent is present
13 in court, or has failed to appear after receiving
14 actual notice, the court shall examine on oath the
15 petitioner, and any witnesses who may be produced. If
16 the court is satisfied that there is any danger of the
17 illegal use of firearms, it shall issue an order that
18 any firearms and any Firearm Owner's Identification
19 Card in the possession of the respondent, except as
20 provided in subsection (b), be turned over to the local
21 law enforcement agency for safekeeping. If the
22 respondent has failed to appear, the court shall issue
23 a warrant for seizure of any firearm and Firearm
24 Owner's Identification Card in the possession of the
25 respondent. The period of safekeeping shall be for a
26 stated period of time not to exceed 2 years. The

1 firearm or firearms and Firearm Owner's Identification
2 Card shall be returned to the respondent at the end of
3 the stated period or at expiration of the order of
4 protection, whichever is sooner.

5 (b) If the respondent is a peace officer as defined
6 in Section 2-13 of the Criminal Code of 1961, the court
7 shall order that any firearms used by the respondent in
8 the performance of his or her duties as a peace officer
9 be surrendered to the chief law enforcement executive
10 of the agency in which the respondent is employed, who
11 shall retain the firearms for safekeeping for the
12 stated period not to exceed 2 years as set forth in the
13 court order.

14 (15) Prohibition of access to records. If an order of
15 protection prohibits respondent from having contact with
16 the minor child, or if petitioner's address is omitted
17 under subsection (b) of Section 203, or if necessary to
18 prevent abuse or wrongful removal or concealment of a minor
19 child, the order shall deny respondent access to, and
20 prohibit respondent from inspecting, obtaining, or
21 attempting to inspect or obtain, school or any other
22 records of the minor child who is in the care of
23 petitioner.

24 (16) Order for payment of shelter services. Order
25 respondent to reimburse a shelter providing temporary
26 housing and counseling services to the petitioner for the

1 cost of the services, as certified by the shelter and
2 deemed reasonable by the court.

3 (17) Order for injunctive relief. Enter injunctive
4 relief necessary or appropriate to prevent further abuse of
5 a family or household member or further abuse, neglect, or
6 exploitation of a high-risk adult with disabilities or to
7 effectuate one of the granted remedies, if supported by the
8 balance of hardships. If the harm to be prevented by the
9 injunction is abuse or any other harm that one of the
10 remedies listed in paragraphs (1) through (16) of this
11 subsection is designed to prevent, no further evidence is
12 necessary that the harm is an irreparable injury.

13 (c) Relevant factors; findings.

14 (1) In determining whether to grant a specific remedy,
15 other than payment of support, the court shall consider
16 relevant factors, including but not limited to the
17 following:

18 (i) the nature, frequency, severity, pattern and
19 consequences of the respondent's past abuse, neglect
20 or exploitation of the petitioner or any family or
21 household member, including the concealment of his or
22 her location in order to evade service of process or
23 notice, and the likelihood of danger of future abuse,
24 neglect, or exploitation to petitioner or any member of
25 petitioner's or respondent's family or household; and

26 (ii) the danger that any minor child will be abused

1 or neglected or improperly removed from the
2 jurisdiction, improperly concealed within the State or
3 improperly separated from the child's primary
4 caretaker.

5 (2) In comparing relative hardships resulting to the
6 parties from loss of possession of the family home, the
7 court shall consider relevant factors, including but not
8 limited to the following:

9 (i) availability, accessibility, cost, safety,
10 adequacy, location and other characteristics of
11 alternate housing for each party and any minor child or
12 dependent adult in the party's care;

13 (ii) the effect on the party's employment; and

14 (iii) the effect on the relationship of the party,
15 and any minor child or dependent adult in the party's
16 care, to family, school, church and community.

17 (3) Subject to the exceptions set forth in paragraph
18 (4) of this subsection, the court shall make its findings
19 in an official record or in writing, and shall at a minimum
20 set forth the following:

21 (i) That the court has considered the applicable
22 relevant factors described in paragraphs (1) and (2) of
23 this subsection.

24 (ii) Whether the conduct or actions of respondent,
25 unless prohibited, will likely cause irreparable harm
26 or continued abuse.

1 (iii) Whether it is necessary to grant the
2 requested relief in order to protect petitioner or
3 other alleged abused persons.

4 (4) For purposes of issuing an ex parte emergency order
5 of protection, the court, as an alternative to or as a
6 supplement to making the findings described in paragraphs
7 (c)(3)(i) through (c)(3)(iii) of this subsection, may use
8 the following procedure:

9 When a verified petition for an emergency order of
10 protection in accordance with the requirements of Sections
11 203 and 217 is presented to the court, the court shall
12 examine petitioner on oath or affirmation. An emergency
13 order of protection shall be issued by the court if it
14 appears from the contents of the petition and the
15 examination of petitioner that the averments are
16 sufficient to indicate abuse by respondent and to support
17 the granting of relief under the issuance of the emergency
18 order of protection.

19 (5) Never married parties. No rights or
20 responsibilities for a minor child born outside of marriage
21 attach to a putative father until a father and child
22 relationship has been established under the Illinois
23 Parentage Act of 1984, the Illinois Public Aid Code,
24 Section 12 of the Vital Records Act, the Juvenile Court Act
25 of 1987, the Probate Act of 1985, the Revised Uniform
26 Reciprocal Enforcement of Support Act, the Uniform

1 Interstate Family Support Act, the Expedited Child Support
2 Act of 1990, any judicial, administrative, or other act of
3 another state or territory, any other Illinois statute, or
4 by any foreign nation establishing the father and child
5 relationship, any other proceeding substantially in
6 conformity with the Personal Responsibility and Work
7 Opportunity Reconciliation Act of 1996 (Pub. L. 104-193),
8 or where both parties appeared in open court or at an
9 administrative hearing acknowledging under oath or
10 admitting by affirmation the existence of a father and
11 child relationship. Absent such an adjudication, finding,
12 or acknowledgement, no putative father shall be granted
13 temporary custody of the minor child, visitation with the
14 minor child, or physical care and possession of the minor
15 child, nor shall an order of payment for support of the
16 minor child be entered.

17 (d) Balance of hardships; findings. If the court finds that
18 the balance of hardships does not support the granting of a
19 remedy governed by paragraph (2), (3), (10), (11), or (16) of
20 subsection (b) of this Section, which may require such
21 balancing, the court's findings shall so indicate and shall
22 include a finding as to whether granting the remedy will result
23 in hardship to respondent that would substantially outweigh the
24 hardship to petitioner from denial of the remedy. The findings
25 shall be an official record or in writing.

26 (e) Denial of remedies. Denial of any remedy shall not be

1 based, in whole or in part, on evidence that:

2 (1) Respondent has cause for any use of force, unless
3 that cause satisfies the standards for justifiable use of
4 force provided by Article VII of the Criminal Code of 1961;

5 (2) Respondent was voluntarily intoxicated;

6 (3) Petitioner acted in self-defense or defense of
7 another, provided that, if petitioner utilized force, such
8 force was justifiable under Article VII of the Criminal
9 Code of 1961;

10 (4) Petitioner did not act in self-defense or defense
11 of another;

12 (5) Petitioner left the residence or household to avoid
13 further abuse, neglect, or exploitation by respondent;

14 (6) Petitioner did not leave the residence or household
15 to avoid further abuse, neglect, or exploitation by
16 respondent;

17 (7) Conduct by any family or household member excused
18 the abuse, neglect, or exploitation by respondent, unless
19 that same conduct would have excused such abuse, neglect,
20 or exploitation if the parties had not been family or
21 household members.

22 (Source: P.A. 93-108, eff. 1-1-04.)